

§ 89.503 Test orders.

(a) A test order addressed to the manufacturer is required for any testing under this subpart.

(b) The test order is signed by the Assistant Administrator for Air and Radiation or his or her designee. The test order must be delivered in person by an EPA enforcement officer or EPA authorized representative to a company representative or sent by registered mail, return receipt requested, to the manufacturer's representative who signed the application for certification submitted by the manufacturer, pursuant to the requirements of the applicable section of subpart B of this part. Upon receipt of a test order, the manufacturer must comply with all of the provisions of this subpart and instructions in the test order.

(c) Information included in test order.

(1) The test order will specify the engine family to be selected for testing, the manufacturer's engine assembly plant or associated storage facility or port facility (for imported engines) from which the engines must be selected, the time and location at which engines must be selected, and the procedure by which engines of the specified family must be selected. The test order may specify the configuration to be audited and/or the number of engines to be selected per day. Engine manufacturers are required to select a minimum of four engines per day unless an alternate selection procedure is approved pursuant to § 89.507(a), or unless total production of the specified configuration is less than four engines per day. If total production of the specified configuration is less than four engines per day, the manufacturer selects the actual number of engines produced per day.

(2) The test order may include alternate families to be selected for testing at the Administrator's discretion in the event that engines of the specified family are not available for testing because those engines are not being manufactured during the specified time or are not being stored at the specified assembly plant, associated storage facilities, or port of entry.

(3) If the specified family is not being manufactured at a rate of at least two engines per day in the case of manufac-

turers specified in § 89.508(g)(1), or one engine per day in the case of manufacturers specified in § 89.508(g)(2), over the expected duration of the audit, the Assistant Administrator or her or his designated representative may select engines of the alternate family for testing.

(4) In addition, the test order may include other directions or information essential to the administration of the required testing.

(d) A manufacturer may submit a list of engine families and the corresponding assembly plants, associated storage facilities, or (in the case of imported engines) port facilities from which the manufacturer prefers to have engines selected for testing in response to a test order. In order that a manufacturer's preferred location be considered for inclusion in a test order for a particular engine family, the list must be submitted prior to issuance of the test order. Notwithstanding the fact that a manufacturer has submitted the list, the Administrator may order selection at other than a preferred location.

(e) Upon receipt of a test order, a manufacturer must proceed in accordance with the provisions of this subpart.

(f)(1) During a given model year, the Administrator may not issue to a manufacturer more Selective Enforcement Auditing (SEA) test orders than an annual limit determined to be the larger of the following factors:

(i) Production factor, determined by dividing the projected nonroad engine sales in the United States for that model year, as declared by the manufacturer under § 89.505(c)(1), by 16,000 and rounding to the nearest whole number. If the projected sales are less than 8,000, this factor is one.

(ii) Family factor, determined by dividing the manufacturer's total number of certified engine families by five and rounding to the nearest whole number.

(2) If a manufacturer submits to EPA in writing prior to or during the model year a reliable sales projection update or adds engine families or deletes engine families from its production, that information is used for recalculating

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the manufacturer's annual limit of SEA test orders.

(3) Any SEA test order for which the family fails under § 89.510 or for which testing is not completed is not counted against the annual limit.

(4) When the annual limit has been met, the Administrator may issue additional test orders to test those families for which evidence exists indicating noncompliance. An SEA test order issued on this basis will include a statement as to the reason for its issuance.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56996, Oct. 23, 1998]

§ 89.504 Testing by the Administrator.

(a) The Administrator may require by test order under § 89.503 that engines of a specified family be selected in a manner consistent with the requirements of § 89.507 and submitted to the Administrator at the place designated for the purpose of conducting emission tests. These tests will be conducted in accordance with § 89.508 to determine whether engines manufactured by the manufacturer conform with the regulations with respect to which the certificate of conformity was issued.

(b) *Designating official data.* (1) Whenever the Administrator conducts a test on a test engine or the Administrator and manufacturer each conduct a test on the same test engine, the results of the Administrator's test comprise the official data for that engine.

(2) Whenever the manufacturer conducts all tests on a test engine, the manufacturer's test data is accepted as the official data, provided that if the Administrator makes a determination based on testing conducted under paragraph (a) of this section that there is a substantial lack of agreement between the manufacturer's test results and the Administrator's test results, no manufacturer's test data from the manufacturer's test facility will be accepted for purposes of this subpart.

(c) If testing conducted under § 89.503 is unacceptable under paragraph (b)(2) of this section, the Administrator must:

(1) Notify the manufacturer in writing of the Administrator's determination that the test facility is inappropriate for conducting the tests required

by this subpart and the reasons therefor; and

(2) Reinstate any manufacturer's data upon a showing by the manufacturer that the data acquired under § 89.503 was erroneous and the manufacturer's data was correct.

(d) The manufacturer may request in writing that the Administrator reconsider the determination in paragraph (b)(2) of this section based on data or information which indicates that changes have been made to the test facility and these changes have resolved the reasons for disqualification.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56996, Oct. 23, 1998]

§ 89.505 Maintenance of records; submittal of information.

(a) The manufacturer of any new nonroad engine subject to any of the provisions of this subpart must establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines in accordance with § 89.508 pursuant to a test order issued under this subpart, specifically, the equipment requirements specified in §§ 86.884-8 and 86.884-9 of this chapter and the equipment requirements specified in §§ 89.306, 89.308, 89.309, and 89.312.

(2) *Individual records.* These records pertain to each audit conducted pursuant to this subpart and include:

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on the engine when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the audit;

(iv) A record and description of any repairs performed prior to and/or subsequent to approval by the Administrator, giving the date, associated time, justification, name(s) of the authorizing personnel, and names of all supervisory personnel responsible for the conduct of the repair;

(v) The date the engine was shipped from the assembly plant, associated storage facility or port facility, and date the engine was received at the testing facility;